IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE FOURTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

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PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

WRIT PETITION NO : 20243 of 1995

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Between:

1 R.Bhujanga Reddy (Died) S/o R.Anantha Reddy
R/o Palair (V), Kusumanchi(M), Khammam(D).
2 Gadwala Sreenivas Rao S/o Rangaiah
R/o Palair (V), Kusumanchi(M), Khammam(D).
3 Bajjuri Rama Narsamma w/o Venkat Reddy
R/o Palair (V), Kusumanchi(M), Khammam(D).
4 Addanki Ramaiah S/o Venkat Narsiah
R/o Palair (V), Kusumanchi(M), Khammam(D).
5 Badavath Basu S/o Padeera
R/o Palair (V), Kusumanchi(M), Khammam(D).
6 Addanki Brahamanachari s/o Venkat Narsaiah
R/o Palair (V), Kusumanchi(M), Khammam(D).
7 Bhongiri Rajaiah S/o Kanakaiah
R/o Palair (V), Kusumanchi(M), Khammam(D).
8 Yedavelli Lakshmi W/o Y.Sreenivas Rao
R/o Palair (V), Kusumanchi(M), Khammam(D).
9 Yedavelli Nirmala W/o Y.Poornaiah
R/o Palair (V), Kusumanchi(M), Khammam(D).
10 R.Jayanth Reddy S/o. R. Anantha Reddy,

R/o. Palair (V), Kusumanchi (M), Khammam (D).

(10th petitioner brought on record as LR of deceased

first petitioner as per court order,dated 17-9-1998 in W.P.M.P.No.30314/1998)

..... PETITIONERS

AND

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1 The District Collector, Khammam At Khammam (D)
2 The Joint Collector, Khammam At Khammam (D)
3 The Executive Engineer Roads, and Buildings,
Khammam.

4 The Divisional Engineer, Roads and Buildings,

Khammam.
5 The Revenue Divisional Officer Khammam, at

Khammam District.
6 The Mandal Revenue Officer, Kusumanchi,

Khammam District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ order or direction more particularly one in the nature of the writ of Mandamus declaring that the respondents no.1 to 6 herein have no power, authority or jurisdiction to interfere, dispossess or demolish the petitioners Houses bearing Grampanchyath Nos.3-12; 1-71; 1-135; 1-97; 3-10; 1-94; 1-69a/B; 1-69/A; 1-69; respectively situated at Palair village, Kusumanchi Mandal, Khammam district on the left side of the high way road leading form khammam to Hyderabad without following the due process of law, either under the Land Acquisition Act or under any other law.

Counsel for the Petitioner: MR.N.VASUDEVA REDDY

Counsel for Respondents: GP FOR ROADS & BUILDINGS

The Court made the following :

ORDER:

The petitioners filed the present writ petition questioning the action of the respondents in trying to dispossess and demolish their houses bearing H.Nos. 3-12; 1-71; 1-135; 1-97; 3-10; 1-94; 1-69a/B; 1-69/A; 1-69; respectively situated at Palair village, Kusumanchi Mandal, Khammam District without following the due process of law either under the Land Acquisition Act or under any other law.

The petitioners are claiming to be the owners of the abovementioned house properties, which are situated by the side of highway leading from Khammam to Hyderabad. They allege that respondents 3 & 4 along with other officials have visited their village on 1-9-1995, demarcated the area and the houses to be affected in road widening, and threatened to demolish their houses if the petitioners do not vacate the houses and hand over vacant possession.

In the counter affidavit it is stated that the petitioners being encroachers of the Government land, were not entitled to invoke the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India. The Government made proposals to improve the State highway road to National highway status, i.e., four

lanes, side drains and footpath in Town limits, and instructed R & B to fix up boundaries at every 100 mts. It is also stated that the project was sanctioned by the World Bank. The District Collector, Khammam instructed the authorities for removal of encroachments. Accordingly, date of eviction was scheduled from 25-8-1995 to 27-8-1995 and the same was informed to public by tom tom and also through loud speakers. The allegation that the process of demolition was done without following the due process of law is denied in the counter affidavit. It is also denied that demolition of petitioners houses has not been taken till the date of filing of the counter dated 26-7-1996.

Learned counsel appearing on behalf of the petitioners submitted that the petitioners have constructed their houses in their respective lands and they are in possession and enjoyment of the property since more than 50 to 60 years and the contention of the respondents that the petitioners have encroached the property abutting the road margin is baseless. It has also been contended that the records do not contain 100 feet width road as contended in the counter affidavit and the allegations made in the counter affidavit that the petitioners have encroached the 100 feet road, is without any basis. He also placed reliance on a Division Bench judgment of this court in **P. Lakshmana Rao vs. Executive Officer** wherein the Division Bench held as under:

"When a property is required for public purpose viz., for widening of roads or for any other purpose, the authorities straightaway cannot take the law into their hands and jump into the premises and attempt to evict the occupants or dispossess them or demolish their property. Before taking any such action, the authorities concerned shall issue a notice notifying as to the nature of the property, the purpose for which it is required, to whom it belongs and the action proposed calling for explanation or objections, if any, from the occupants and after considering the said objections or explanation, the authorities shall pass appropriate orders, if necessary, by giving oral hearing wherever there is a dispute as to the ownership of the property. In cases where demolition has already taken place, the authorities that barring a few cases, in most of the cases which we came across and dealt with separately, no separate orders of eviction, dispossession or demolition as the case may be, have been passed. In cases of demolition also, they were not preceded by any order or notice of demolition. The complaint of the occupants/s though looks misconceived but after hearing the arguments. We found that there was an attempt by the Government either to widen the roads or clear the encroachments. But in our view, before doing that, the authorities have to follow certain Principles of natural Justice. Hence, the Writ Petition is disposed of reserving liberty to the State to take action, if it so desires, after complying with the following requirements.

"If the authorities, viz., the Mandal Revenue Officer, Revenue Divisional Officer, Executive Officer of local authority want to take any action of eviction, dispossession or demolition, first they shall issue a notice to the occupant/s calling upon him/them to show-cause as to why the proposed action shall not be taken. In receipt of such objections or explanation, if there is any objection as to the ownership of the property, the Mandal

Revenue Officer or other authorities concerned shall determine the extent of encroachment or unauthorized occupation and shall determine the extent of encroachment or unauthorized occupation and shall determine whether the property in question belongs to the Government or any other local self Government authority or to the occupant/s. In case of demolition of the private property, the Mandal Revenue Officer or other authorities concerned shall determine the loss caused to the occupant/s on the basis of the assessment to be made by the engineer of Roads and Buildings Department. On such assessment of damages, the Mandal Revenue Officer or the concerned authority shall take appropriate steps to disburse the amount qualified forthwith. If the demolition took place is in respect of the property of the Government, the question of payment of damages will not arise. The occupant/s is/are entitled to remove the material used for the construction. The Mandal Revenue Officer shall issue a notice within 60 days from the date of receipt of a copy of this Order calling upon the claimant/occupant/s to show-cause as to why the action proposed shall not be taken by giving 60 days time to file the objections, if any. The person interested viz., the objections or explanation within the time stipulated together with any other documents he/they would like to rely upon in support of his their case. On receipt of such explanation/objections and documents, if any the Mandal revenue Officer or the concerned authority shall consider the same, if necessary, by giving an oral hearing and then pass appropriate orders within three months thereafter, in case of any enquiry, the same should be conducted in a summary way and the occupant/s shall produce all the evidence which he/they wants/want to relay upon before the Mandal Revenue Officer on the appointed day.

If there is any claim for grant or assignment of the property, the concerned officer shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of the occupant/s. In cases of demolition, the loss caused shall have to be assessed by the Engineer of the area concerned, who, before assessing, shall visit the premises along with the Officer concerned and the occupant/s or the person/s interest on the date notified by the concerned officer. The occupant/s shall appear before the concerned authority on all the dates in order to complete the enquiry at an early date."

No material has been placed before this court by the counsel appearing on behalf of the respondents to the effect that they have followed due process of law before demolishing the petitioners' houses and no notice was issued. In the absence of any material, it has to be held that the respondents have violated the principles of natural justice. Under the above circumstances, there shall be a direction to the respondents not to interfere with the possession and enjoyment of the petitioners' property without following due process of law.

Accordingly the Writ Petition is allowed. No costs.

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T. Meena Kumari, J.

4th November, 2004.

Js.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Thursday the fourth day of November, Two thousand and four.

ASSISTANT REGISTRAR

To

1 The District Collector, Khammam At Khammam (D)
2 The Joint Collector, Khammam At Khammam (D)
3 The Executive Engineer Roads, and Buildings, Khammam.
4 The Divisional Engineer, Roads and Buildings,

Khammam.
5 The Revenue Divisional Officer Khammam, at

Khammam District.
6 The Mandal Revenue Officer, Kusumanchi,

7 Two CCs to G.P. for Roads and Buildings, High Court Buildings,

High Court of A.P., Hyderabad. (OUT).

8 2 CD copies.